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TAGS: [ECON](#) [EAIR](#) [AMGT](#) [FAA](#) [RS](#)
SUBJECT: U.S.-RUSSIA STATE FLIGHTS DISPUTE: RUSSIA REMAINS
A NO-FLY ZONE

REF: 2007 MOSCOW 5311 AND PREVIOUS

Classified By: EUR DAS David J. Kramer for reasons 1.4 (b) and (d)

¶1. (C) Summary: On January 25, Russian and American delegations, led by Alexander Neradko, Head of the Russian Federal Air Navigation Authority (FANA), and PM Senior Advisor Ambassador Jackson McDonald, respectively, reviewed and reaffirmed their existing positions regarding payment of air navigation and related fees to Russia for U.S. state flights. The deadlock with Russia remains, with the Russians seeking quantitative and qualitative parity with the U.S. on the number and type of flights that can be exempted from fees. The U.S. maintains its position of unfettered freedom to designate state flights. Neradko sought further negotiations, but refused to allow U.S. state aircraft to fly to and over Russia unrestricted while negotiations continue. Both sides maintain their interest in continuing to try to find a solution but, in light of the entrenched position of each side, the utility of further consultations with FANA is doubtful. For the time being, since diplomatic clearances for state flights landing in Russia are conditioned on the payment of air navigation fees, official travelers to Russia will need to travel by commercial or charter flights; MilAir will not be available.

¶2. (SBU) In a cordial, business-like discussion January 25, Alexander Neradko, Head of the Russian Federal Air Navigation Authority (FANA), and Ambassador Jackson McDonald, PM Senior Advisor for Security Negotiations and Agreements, reviewed the U.S. and Russian positions regarding payment of air navigation and related fees to Russia for U.S. state flights. (NOTE: Since November 1, 2007, Russia has insisted on pre-payment of air navigation fees before it will grant diplomatic clearance. As it is longstanding U.S. policy neither to pay nor to charge these fees on state flights, no U.S. state flights have flown to or over Russia since November 1, 2007. END NOTE). Neradko was accompanied by FANA, MFA, and Russian Embassy staff. Ambassador McDonald was accompanied by representatives from L/PM, PM/ISO, EUR/RUS and OSD.

Sovereign Principle

¶3. (C) Ambassador McDonald explained that the U.S. bases its position on the principle of international law that one sovereign does not tax another. By extension, this exempts a sovereign's aircraft from payment of taxes and fees, as these aircraft are a sovereign instrument

carrying out a non-commercial, government function. The Russian system is fine for commercial activity, but state flights are in a wholly different category. It is the U.S. position that this issue must be handled on a state-to-state basis; ICAO rules do not apply to these aircraft. In response to Neradko's question, the U.S. delegation reported that the U.S. does not have a law prohibiting payment of air navigation fees on its state flights. Since the United States subscribes to international law as it is widely observed on this point, a domestic law is not necessary.

Russia Abides By International Law...But the U.S. Must Pay

14. (C) Neradko stressed that the GOR fully abides by international law, but he claimed that international law does not apply to these exclusively economic transactions. He argued that FANA seeks payment for services rendered; these are not fees or taxes. Thus it is the Russian Federation's position that the U.S. argument that "sovereigns should not tax other sovereigns" does not apply. These service charges cover operating costs, including aviation security and maintenance of air traffic control equipment, for State Company ORVD, the service provider. Neradko maintained that this company (despite its name) receives no budget from the GOR and derives its income from the collection of charges for services rendered. All aircraft make use of the services and safety functions that ORVD supplies, so all aircraft must compensate ORVD. By FANA's calculation, the current U.S. "debt" to Russia for services rendered over approximately the last 15 years is \$2.3 million.

Political Fallout

15. (C) Neradko stressed repeatedly that the GOR is not seeking this payment based on any political motivation. The Russian goal is only to assist ORVD to recoup its losses -- since changes to the Russian tax code in 2005, ORVD must pay taxes on services charges, whether or not payment is actually received. Russian law does not currently provide for any exception to the charges, Neradko said, but then reaffirmed that an international agreement with the U.S. would trump existing Russian law.

16. (C) Ambassador McDonald welcomed Neradko's statement that Russia's decision to charge fees is not politically motivated. He noted, however, that there is already political fallout from this economic decision: the United States' inability to fly to and over Russia is interfering with diplomatic work.

The Heart of the Matter: The U.S. Flies Too Many Flights

17. (C) Neradko said that the U.S. flies too many flights. He singled out the U.S. Air Force (USAF) in particular as having "far too many flights," adding that USAF flights also make many technical landings in Petropavlovsk Kamchatki en route to Korea. Only something much closer to parity with the type and frequency of Russian flights could be acceptable. Russia would like to meet soon at the technical level to try and develop a way forward. Ambassador McDonald agreed on the need to find some mutually acceptable arrangement but noted that talks to date had failed to reconcile our fundamentally opposed approaches. These differences notwithstanding, the Ambassador offered to meet again if the GOR would remove, while negotiations are underway, the current demand for pre-payment of air navigation fees that is effectively blocking all U.S. state flights to Russia.

18. (C) Neradko politely refused, suggesting instead that POTUS, the VP, and the Secretaries of State and Defense be exempted from fees; all other flights would have to pre-pay while negotiations continue.

¶9. (C) Reiterating U.S. policy that there be no limitations on the U.S. sovereign right to designate and fly state flights, and noting that this is the USG's policy worldwide, Ambassador McDonald rejected the Russian counter-offer. No date was agreed for further talks.

¶10. (C) Comment: The meeting was cordial, but the Russian position remains firm: as a starting point for negotiations the U.S. must first reduce the number and type of state flights, and then all remaining flights must pay. Our position against paying navigation and overflight fees remains just as firm. The U.S. now needs to communicate to the Russians whether we intend to pursue negotiations and, if so, when and on the basis of what text (both we and the Russians have tabled several drafts in previous years). Given the diametrically opposed starting points, however, there seems little more to discuss with FANA. For the time being, since diplomatic clearances are conditioned on the payment of air navigation fees, official travelers to Russia will need to travel by commercial or charter flights; MilAir will not be available.

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